

**Remarks**

Applicants respectfully request reconsideration and a notice of allowance.

**I. The Amendments**

None of the amendments made herein add new matter to the application, and their entry is therefore respectfully requested.

Claim 1, paragraph (iii) recited “said modified sequence” and as now amended it reads “said modified nucleotide sequence,” which is a simple linguistic change that does not affect the claim scope.

Claims 8, 9 and 10 have been canceled and replaced by new claims 17, 18, and 19. The new claims correspond to former claims 8, 9 and 10 and are presented so that the claims – including dependencies – are in numerical order.

New claims 20, 21, 22 and 23 depend from claim 16 and otherwise correspond to previously presented claims 3, 4, 6 and 7.

New claim 24 depends from claim 16 and otherwise corresponds to previously presented claim 14.

New claim 25 depends from claim 16 and otherwise corresponds to previously presented claim 15.

New claims 26, 27 and 28 depend from claim 16 and otherwise correspond to former claims 8, 9 and 10.

**II. Rule 133 Statement**

Applicants’ legal representative acknowledges the Examiner’s courtesies during an initial telephone conversation on April 27, 2006 and the further telephone discussion conducted on May 1, 2006. The formality rejection was discussed. The question of whether or not “modified nucleotide sequence” referred to two nucleotides was discussed. It was noted that since the modified nucleotide sequence included SEQ ID NO:24 that the modified sequence had more than 2 amino acids. The claim 1(b)(i) recital of “said modified nucleotide sequence has more than 90% identity to the nucleotide sequence of any region consisting of 250 bp or more within the nucleotide sequence shown in SEQ ID NO:1” was discussed. It was noted that when said “said modified nucleotide sequence” is compared to a region consisting of 250 bp in the SEQ ID NO:1, it has more than 90% identity to the region

(consisting of the 250 bp) in SEQ ID NO:1. The reference to “said...” was discussed and it was noted that in (b) the term “a modified nucleotide sequence” is the antecedent for “said modified...sequence” whereby it was suggested that the statement under “Second” in the Office Action, page 2, towards the bottom of the page, should be reconsidered and withdrawn.

## **II. Traversing the Formality Rejection**

On page 2 of the Office Action, the Examiner rejected previously pending claims 1, 3, 4, 6-10 and 13-16 under 35 U.S.C. § 112, second paragraph. Claims 1 and 16 (and by dependence, claims 3, 4, 6-10 and 13-15) were rejected based upon the premise that it is unclear what various phrases in part (b) of the claim are intended to modify. In particular, the Examiner opined “modified nucleotide sequence” is “interpreted to encompass as little as two nucleotides. As presently understood, it also appears that the Examiner has queried whether the modified nucleotide sequence, which contains the SEQ ID NO:24, is the same modified nucleotide sequence that has more than 90% identity to any region consisting of 250 bp or more of SEQ ID NO:1.

In response, Applicants respectfully submit that there should not be any confusion as to what the phrases used in part (b) of the claim are modifying.

“Modified nucleotide sequence” has more than 2 nucleotides.

The phrase “which contains the nucleotide sequence shown in SEQ ID NO:24” refers to the modified nucleotide sequence in which one or more bases have been deleted, substituted or added, and therefore it has more than 2 nucleotides.

The modified nucleotide sequence includes SEQ ID NO:24 and the modified nucleotide sequence has more than 90% identity to the nucleotide sequence of any region consisting of 250 bp or more within the nucleotide sequence shown in SEQ ID NO:1.

It is courteously requested that the statement in the Office Action questioning whether any “250 bp” or any contiguous 250 bp in SEQ ID NO:1 (Office Action, page 3) be reconsidered and withdrawn. The 250 bp relates to a region in SEQ ID NO:1, and a region consists of the 250 bp’s as recited in claims 1 and 16.

It is respectfully note that the formality rejection does not seem apposite at all to claim 13.

The independent claims are definite and a person who is skilled in the art would know the metes and bounds of the claimed inventions.

### Conclusion

Applicants respectfully submit that the Examiner's rejection of claims under 35 U.S.C. § 112 has been overcome. Applicants courteously solicit a notice of allowance.

If, in the opinion of the Examiner, a phone call may help to expedite the prosecution of this application, the Examiner is invited to call one of Applicants' undersigned attorneys.

Respectfully submitted,

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